

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF HAWAII**

In Re:	)	<b>Case No. 02-04166 (RJF)</b>
	)	<b>(Chapter 7)</b>
FUKADA, SHUNICHIRO,	)	
	)	
Debtor.	)	
<hr style="width:40%; margin-left:0;"/>	)	
	)	<b>Adversary Proceeding</b>
HAWAIIAN KONA COFFEE	)	<b>No. 03-90011</b>
COMPANY, LTD., a Hawaii	)	
corporation,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
SHUNICHIRO FUKADA, also known	)	
as SAM FUKADA,	)	
	)	
Defendant.	)	
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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Trial in this adversary proceeding was heard by the Honorable Robert J. Faris on January 12, 13, and 14 and February 2, 2004. Plaintiff HAWAIIAN KONA COFFEE COMPANY, LTD. ("HKCC") was represented by the law firm of Case Bigelow & Lombardi, Randall Yamamoto of Watanabe Ing Kawashima & Komeiji, and David B. Kaapu. Yoshiaki Kawashima, a representative of HKCC, was also present at trial. Defendant appeared *pro se*.

The Court, having reviewed the records and files as well as the evidence admitted at trial and having considered the arguments and written

submissions of the parties, hereby makes the following Findings of Fact and Conclusions of Law:

**I. FINDINGS OF FACT**

**A. PROCEDURAL BACKGROUND**

1. On November 3, 2003, this court filed its Order Granting Plaintiff Hawaiian Kona Coffee Company, Ltd.'s Motion to Modify Order Compelling Discovery and for Sanctions (the "Order for Sanctions") and ordered, *inter alia*, that:

a. "Defendant Fukada's ANSWER filed herein on April 11, 2003 shall be and hereby is stricken in its entirety."

b. "Default shall be and hereby is entered against Defendant Fukada in favor of Plaintiff Hawaiian Kona Coffee Company, Ltd. as to all counts of the Complaint."

2. Pursuant to the Order for Sanctions, all of the allegations of Plaintiff's Complaint to Determine Non-Dischargeability of Debt and/or Discharge of Debts and for Other Relief, filed herein on February 29, 2003, are deemed admitted. Nevertheless, the court required HKCC to prove its *prima facie* case. HKCC did not seek and is not seeking any remedy or recovery under Count XII of Plaintiff's Complaint.

**B. FACTUAL BACKGROUND**

3. At all relevant times, HKCC was a Hawaii corporation doing business within the State of Hawaii selling green and roasted coffee. HKCC was a wholly owned subsidiary of Ueshima Coffee Co., Ltd., a Japan corporation (“UCC Japan”). In March of 2003, HKCC was dissolved. HKCC pursues its claims herein pursuant to Section 414-385 of the Hawaii Revised Statutes.

4. Defendant SHUNICHIRO FUKADA, also known as SAM FUKADA (“Fukada”), is a resident of the State of Hawaii and the Chapter 7 Debtor herein.

**C. FUKADA’S POSITION WITH HKCC**

5. From 1989 through 1996, Fukada was an employee of UCC Japan assigned to HKCC as an officer (Executive Vice President), director, and general manager. In 1995 and 1996, Fukada earned an annual income of about \$250,000.

6. As an officer, director and general manager of HKCC, Fukada was in a position of trust and confidence with HKCC and owed fiduciary duties to HKCC, including the duty to disclose material facts and to avoid conflicts of interest.

**D. HARVEST INTERNATIONAL/BOULWARE TRANSACTIONS**

7. Fukada agreed and arranged for the purchase of green Kona

coffee from Kona Kai Farms (“Kona Kai”) of Berkeley, California. Rather than arrange for HKCC to acquire the green coffee directly from Kona Kai, Fukada arranged to have a Hong Kong company, Harvest International King Coffee Company, Ltd. (“Harvest International”), and Michael Boulware ostensibly act as the buyer of the Kona coffee from Kona Kai and then ostensibly sell the same green Kona coffee to HKCC at a higher price. Fukada successfully concealed this arrangement from HKCC.

8. Fukada could have arranged for HKCC to purchase the Kona coffee directly from Kona Kai, rather than from Harvest International and Michael Boulware, at the same price which Harvest International and Boulware paid.

9. Harvest International and Michael Boulware had no real or active involvement in the transactions. They never had physical custody of the coffee and acted only as intermediaries for receiving funds. Fukada actually negotiated all aspects of the transactions with Kona Kai, including the purchase price, shipping, and billing arrangements.

10. Unbeknownst to HKCC and without HKCC’s authorization or permission, Fukada allowed Harvest International and Michael Boulware to profit at the expense of HKCC. FUKADA received a kickback commission from Harvest International or its nominee.

11. Fukada referred to this scheme involving HKCC in Hawaii,

Harvest International or other companies in Hong Kong, and Kona Kai in California as “triangle trading.” Fukada knew that the triangle trading scheme was improper because his attorney, Marcus Kosins, told him “don’t do those things . . . there could be some illegal aspects to it.”

12. In 1994 and 1995, there were five transactions between HKCC and Harvest International and three transactions between HKCC and Michael Boulware.

13. Fukada fraudulently concealed from HKCC the material facts concerning the triangle trading scheme, including the facts that HKCC could have purchased the Kona coffee for a substantially lower price directly from Kona Kai, that Harvest International and Boulware profited from the transactions, and that Fukada received fraudulent kickbacks from Harvest International or its nominee.

14. Fukada knew that the facts he concealed from HKCC were important to HKCC and that his concealment was detrimental to HKCC.

15. HKCC had no knowledge of or reason to know the facts which Fukada deliberately concealed.

16. As a direct result of the acts, omissions and conduct of Fukada, money, property, services and/or credit was obtained by false pretenses, false representations, or actual fraud.

17. As a proximate result of Fukada’s acts, omissions, and

wrongful conduct in the eight transactions involving Harvest International or Michael Boulware, HKCC has been damaged in the total amount of \$135,500.

**E. HAWAII RIM PAC TRADING COMPANY TRANSACTIONS**

18. On or about February 2, 1995, Fukada arranged for the formation of a Hawaii corporation named Hawaii Rim Pac Trading Company (“Rim Pac”).

19. Fukada had his friend, Sakae Fujimoto, also known as Joe Fujimoto, serve as the titular head of Rim Pac. In reality, Fujimoto was only a figurehead, and Fukada always exercised complete ownership, direction, and control of Rim Pac.

20. Unbeknownst to HKCC, Fukada caused HKCC’s legal counsel, Alan Nii and the firm of Strack, Nii, Sphikas, Kosins & Jung, to form Rim Pac. The legal fees for the incorporation were charged to and paid by HKCC within HKCC’s monthly retainer arrangement with Nii and his firm. Nii’s firm sent bills to HKCC which included itemized statements of services rendered showing that the vast majority of Nii’s services were for Rim Pac, not HKCC. In order to conceal the fact that Fukada had used HKCC’s resources to form Rim Pac for his personal benefit, Fukada directed Nii’s firm to issue substitute bills without the itemization of services and to stop providing itemized billings in the future.

21. Fukada secretly operated, directed, and controlled Rim Pac

continuously from Rim Pac's inception in February 1995. Fukada intentionally and fraudulently concealed his control of Rim Pac from HKCC by (among other things) causing Sakae Fujimoto to hold himself out as president and director of Rim Pac when in actuality he was merely acting as a figurehead while Fukada exclusively controlled all actions of Rim Pac.

22. From Rim Pac's inception, Fukada caused Rim Pac to compete directly with HKCC in the business of selling green and roasted coffee in Hawaii, the mainland United States, and internationally. Fukada directed customers such as Western Family to Rim Pac instead of HKCC, to the benefit of Rim Pac and himself and to the detriment of HKCC. In 1995 and 1996, Fukada should have caused HKCC, rather than Rim Pac, to make all of Rim Pac's sales of coffee to third parties. Fukada's conduct resulted in decreased sales by, and losses to, HKCC (hereinafter "Sales to Third Parties").

23. From August 1996 to December 1996, Fukada took from HKCC and transferred to Rim Pac approximately 10,000 pounds of green Kona coffee for no consideration and without HKCC's knowledge or approval. Fukada subsequently caused Rim Pac to sell the same Kona coffee in its roasted form back to HKCC at the market price for roasted coffee ("Sales to HKCC"). These transactions benefitted Rim Pac and Fukada at the expense of HKCC.

24. From its inception in February of 1995 to June of 1996, Rim

Pac had no facilities of its own. Instead, Fukada caused Rim Pac to operate from HKCC's premises, improperly using (a) HKCC's offices and warehouse without paying any rent ("Unpaid Rent"), (b) HKCC's employees without paying any compensation or benefits ("Labor Costs Attributable to Rim Pac"), and (c) HKCC's monies, product, inventory and supplies without reimbursement ("Non-HKCC Expenses")

25. From March 1995 to December 1996, Fukada caused Rim Pac to convert and transfer to Rim Pac HKCC coffee products in green and roasted form for little or no consideration and to resell said products at market price for the benefit of Rim Pac and to the detriment of HKCC. In one series of transactions, Fukada caused HKCC to sell its product to Rim Pac at a discounted price, resulting in a loss on that sale of \$4,249; then on the same day Fukada caused HKCC to repurchase the same product from Rim Pac for \$10,899 and to sell that product to Grino International for approximately the same amount. Grino International, however, never paid HKCC for the coffee.

26. Fukada wrongfully allowed Rim Pac to profit at the expense of HKCC by entering into two "Agreements" to sell 350 bags of green Kona coffee to HKCC through UCC America (another wholly owned subsidiary of UCC Japan) in 1995 and 1996 ("UCC America Transactions"). Rim Pac obtained the green coffee in the UCC America Transactions from Kona Kai or another coffee



company and resold the coffee to HKCC for a higher price. HKCC could have purchased the coffee directly from Kona Kai or the other supplier for the lower price. HKCC was unaware that Rim Pac was actually Fukada's corporation and was unaware that Rim Pac was profiting at the expense of HKCC.

27. Fukada received commissions and financial benefits for sales made by Rim Pac to third parties.

28. Fukada made intentional false representations to HKCC and deliberately failed to disclose material facts which he had a duty to disclose to HKCC in order to conceal his fraud upon HKCC. Fukada knew that his representations were false and that the concealment of facts was detrimental to HKCC.

29. HKCC was unaware of Fukada's actions and the facts which he concealed, and HKCC reasonably relied upon Fukada's misrepresentations to its detriment.

30. As a proximate result of Fukada's misconduct, HKCC has been damaged in the amount of \$501,661 as follows: Sales to Third Parties = \$33,880; Sales to HKCC = \$156,930; Unpaid Rent = \$37,361; Labor Costs Attributable to Rim Pac = \$156,525; Non-HKCC Expenses = \$101,817; Grino Transaction = \$15,148.

**F. UCC AMERICA TRANSACTIONS**

31. In July of 1995 and March of 1996, Fukada caused Rim Pac to buy green coffee beans from Kona Kai, and he then arranged for UCC America to finance HKCC's purchases of green coffee beans from Rim Pac at a higher price. Unbeknownst to HKCC, HKCC could have purchased those same green coffee beans directly from Kona Kai for the lower price. If HKCC and UCC America had known that Rim Pac was formed, operated, and controlled by Fukada, then HKCC and UCC America would not have entered into the transactions.

32. As a proximate result of Fukada's misconduct, HKCC has been damaged in the amount of \$145,250 as a result of the UCC America Transactions as follows: Transaction 1 = \$63,000; and Transaction 2 = \$82,250.

**G. SHINY FIELD INTERNATIONAL, LTD. TRANSACTIONS**

33. Fukada used Shiny Field International, Ltd. ("SFI"), a Hong Kong corporation, in order to further his scheme to defraud HKCC.

34. In a continuing course of action designed to defraud HKCC from 1995 through 1996, Fukada secretly arranged to have SFI ostensibly act as the buyer of Kona coffee from Kona Kai and to sell the same coffee to HKCC at an inflated price. HKCC could have purchased the same coffee directly from Kona Kai at a lower price. Fukada directed that false and fictitious invoices be created in order to mislead HKCC. SFI had no real involvement in the transactions. SFI

never had physical custody of the coffee and acted only as an intermediary for receiving funds. Fukada conducted all negotiations regarding SFI's purchase from Kona Kai. Fukada arranged these transactions in order to divert profits from HKCC to SFI and himself.

35. In 1995 and 1996, HKCC purchased at least three shipments, or lots, of Kona coffee from SFI. HKCC, at the direction of Fukada, purchased each lot from SFI despite the fact that HKCC could have purchased it directly from Kona Kai at a lower price.

36. In addition, in November 1996 Fukada caused HKCC to pay SFI \$32,940.00 for coffee bags (using the proceeds of a loan from Bank of Tokyo - Mitsubishi, Ltd., which Fukada arranged). HKCC could have purchased the same bags directly from the supplier at a lower price. Fukada received a kickback commission from SFI for this purchase.

37. Fukada and SFI concealed from HKCC material facts concerning HKCC's purchase of Kona coffee and coffee bags from SFI, including the facts that HKCC could have purchased the coffee and bags directly for a lower price, and that SFI was paying fraudulent kickbacks to Fukada.

38. Fukada falsely represented to HKCC, with the intent to deceive HKCC, that the price paid for the Kona coffee and coffee bags purchased from SFI was a reasonable price. Fukada knew that his representations to HKCC regarding

the price were false. HKCC reasonably relied on Fukada's representations in agreeing to purchase the coffee and bags from SFI to HKCC's detriment and was unaware of Fukada's actions.

39. As a proximate result of Fukada's fraudulent actions, HKCC has been damaged as a result of the Shiny Field International. Ltd. Transactions in the amount of \$182,588.

#### **H. FUTURE ECONOMIC LOSS**

40. Fukada was dissatisfied with his position and prospects in the UCC family of companies and wanted to create his own personal business. He created Rim Pac in February of 1995 for that purpose, using Sakae Fujimoto and his wife Miyako Fukada as figureheads, because he knew that he could not be involved with a competitor of HKCC, such as Rim Pac, while still holding the positions of officer, director, and general manager of HKCC.

41. Fukada created Rim Pac as a coffee business competing with HKCC in a niche market, the "omiyage" market. Fukada diverted business and profits from HKCC to Rim Pac gradually and secretly. If Fukada had not diverted customers and sales from HKCC to Rim Pac, Rim Pac would have had no sales. All sales made by Rim Pac represented a lost corporate opportunity and an economic loss for HKCC. Any sales made by Rim Pac should have benefitted HKCC and would have been HKCC's sales but for the actions of Fukada.

42. Fukada misused and misappropriated HKCC's assets, supplies, employees, product, and inventory to build up Rim Pac's business. He permitted Rim Pac to use HKCC's premises without paying rent, caused HKCC to pay employees and consultants for services rendered to Rim Pac, and trained employees, all for the benefit of Rim Pac and himself and at HKCC's expense.

43. In 1996, Fukada attempted to persuade his superiors that Rim Pac should do all coffee roasting for HKCC under a contract. When Fukada's superiors declined, Fukada decided to leave HKCC and take its entire business with him.

44. In December 1996, Fukada stopped working for HKCC without warning. At that time, HKCC had little if any cash or inventory and had approximately \$1,000,000 of debt. Fukada also induced all of the HKCC employees (except Hiroshi Aida who was a UCC Japan employee) to leave HKCC and go to work for Rim Pac at the end of 1996. He told the HKCC employees that he would be leaving HKCC and joining Rim Pac, that HKCC would be closing, and that they should consider working with him at Rim Pac. Therefore, HKCC had to train an entire set of new employees. The harm which Fukada inflicted upon HKCC was compounded because, at the same time, the coffee industry as whole was encountering diminishing sales and business in Hawaii.

45. As a proximate result of Fukada's misconduct, as described

hereinabove, HKCC suffered a total loss of its business, the value of which, as of December 31, 1996, was \$1,385,000.

**J. DAMAGES**

46. As a proximate result of Fukada's conduct, actions, and omissions, Plaintiff HKCC has suffered economic loss and damages of \$2,349,999 in total as follows:

a. As a result of the improper and fraudulent transactions with Harvest International/Michael Boulware, the economic losses and damages are \$135,500;

b. As a result of the improper and fraudulent transactions with Rim Pac, the economic losses and damages are \$501,661;

c. As a result of the improper and fraudulent transactions with UCC America, the economic losses and damages are \$145,250;

d. As a result of the improper and fraudulent transactions with SFI, the economic losses and damages are \$182,588; and

e. Future economic loss as of December 31, 1996, of \$1,385,000.

47. Fukada's conduct was wilful and malicious and warrants the imposition of punitive damages against Fukada in the amount of \$2,349,999.

**II. CONCLUSIONS OF LAW**

1. Pursuant to 28 U.S.C. § 151, 28 U.S.C. § 157, and 28 U.S.C. § 1334 (b), this Court has jurisdiction over this adversary proceeding. This is a core proceeding. Venue is proper in this district pursuant to 28 U.S.C. § 1409 because this case is related to a case under Title 11 pending in this district.

2. Fukada is indebted to HKCC in the amount of \$4,699,998 plus such attorneys' fees and costs as the court may hereafter award. HKCC may file a separate motion seeking such an award.

3. With respect to Count I of the Complaint, Fukada's debt to HKCC is for money, property, services, or an extension of credit obtained by false pretenses, false representations, or actual fraud within the meaning of 11 U.S.C. § 523(a)(2).

4. With respect to Count II of the Complaint, Fukada was not a "fiduciary" of HKCC within the meaning of 11 U.S.C. § 523(a)(4). Therefore, HKCC shall take nothing on Count II.

5. With respect to Count III of the Complaint, Fukada's debt to HKCC is for embezzlement or larceny within the meaning of 11 U.S.C. § 523(a)(4).

6. With respect to Count IV of the Complaint, Fukada's debt to HKCC is for willful and malicious injury within the meaning of 11 U.S.C. § 523(a)(6).

7. With respect to Count V of the Complaint, Rim Pac and SFI are mere alter egos of Fukada, such that Fukada is personally liable for all of SFI's and Rim Pac's debts to HKCC.

8. With respect to Count VI of the Complaint, Fukada's wrongdoing constitutes deceptive practices under Hawaii Revised Statutes 481A-3. At closing argument, HKCC orally moved to amend its complaint to conform to the evidence in order to add a claim for injunctive relief against future unfair and deceptive practices. The motion is unnecessary because the complaint seeks injunctive relief. The court will not grant injunctive relief, however, because the evidence at trial did not establish a prima facie case that Fukada has engaged in conduct proscribed by section 481A-13 since the end of 1996 or is likely to engage in such conduct in the future.

9. With respect to Count VII of the Complaint, Fukada's debt to HKCC is for actual fraud within the meaning of 11 U.S.C. § 523(a)(2), embezzlement or larceny within the meaning of 11 U.S.C. § 523(a)(4), and willful and malicious injury within the meaning of 11 U.S.C. § 523(a)(6).

10. With respect to Count VIII of the Complaint, Fukada holds the money and property which he fraudulently received to HKCC's detriment as a constructive trustee for the benefit of HKCC.

11. With respect to Counts IX, X, and XI of the Complaint,



Fukada's debt to HKCC is for embezzlement or larceny within the meaning of 11 U.S.C. § 523(a)(4).

12. HKCC is not seeking judgment on Count XII and HKCC shall take nothing on Count XII.

13. At closing argument, Plaintiff HKCC orally moved to amend its complaint to conform to the evidence in order to add a claim under Haw. Rev. Stat. § 480-2. Such a claim would permit Plaintiff HKCC to recover treble damages. The motion is denied. The claim was not tried by express or implied consent of the parties. Fed. R. Bankr. P. 7015.

DATED: Honolulu, Hawaii, February 12, 2004.



*/s/ Robert J. Faris*  
**United States Bankruptcy Judge**